IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MVA) No. 196 of 1994.

Date of Decision: 27th July, 2006.

Ashok Kumar. **Appellant.**

Versus

Himachal Road Transport Corporation and others. **Respondents.**

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting[1]?

For the appellant: Mr. Rajnish K. Lal, Advocate, vice Mr. N.K. Thakur, Advocate.

For the respondent: Mr. Rakesh Jaswal, Advocate, for respondents No.1 and 2.

Mr. Rahul Mahajan, Advocate, for respondent No.3.

V.K.Gupta, C.J. (Oral).

In an accident, occurring on 13th May, 1990 at about 1.00 p.m., the appellant-claimant while driving his scooter was injured and claimed that this accident occurred because of rash and negligent driving of bus No.HP-38-2402 by respondent No.3. This bus was owned by respondents No.1 and 2. The respondents denied the factum of the accident as well as the allegation that it was caused because of rash and negligent driving of the aforesaid bus

---

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

driven by respondent No.3. Following four Issues were framed by the Tribunal:-

"1. Whether the accident is the result of rash and negligent driving of Harbhajan Singh driver, if so its effect? OPP.

2. Whether the petitioner is entitled for compensation for sustaining of injuries, if so to what extent? OPP.

3. Whether the petition is not maintainable as alleged? OPR.

4. Relief."

In support of the allegation that the accident occurred because of the rash and negligent driving of bus No.HP-38-2402 by respondent No.3, the appellant-claimant apart from appearing himself as his own witness produced PW-1 Raj Kumar and PW-3 Rajesh Kumar. The ocular version put forth by these three witnesses, namely, the appellant himself as well as PWs Raj Kumar and Rajesh Kumar did clearly implicate respondent No.3 in the aforesaid accident. But for some minor, inconsequential variations and discrepancies in the statement of three witnesses, a combined reading of the testimonies of these three persons is a clear pointer to the fact that the accident in fact occurred involving the aforesaid bus and that the bus was driven at the relevant time

by none else but respondent No.3. For instance, PW-1 Raj Kumar clearly stated that he saw the appellant coming from the side of the Bus Stand and also saw the bus in question coming from the hospital side. He also saw the bus striking against the scooter driven by the appellant as a result of which the appellant fell down and suffered injuries on his head and blood started oozing out. The appellant was shifted to the hospital. Rajesh Kumar, PW-3 had made a similar statement. He deposed that on the relevant date, he saw the appellant driving scooter and two persons sitting on the pillion coming from the hospital side and the appellant dropped the pillion riders at the Bus Stand and then went back to the hospital side and from the hospital side the aforesaid bus came at a very high speed and struck against the appellant, as a result of which he fell down and received injuries on his head and blood started oozing from his head. He actually went to the extent of saying that the people in the Bus Stand were talking about the fact that the accident was caused because of the rash driving of the bus by respondent No.3. This witness actually recognized respondent No.3 in the Court as the person who was driving the vehicle and who caused the accident. The appellant himself appeared as PW-6 in the case and he very succinctly narrated the entire chain of

events by which he satisfactorily established that immediately after coming out of the outer gate of the Bus Stand and while going towards Una Hospital on Una-Hamirpur road, the aforesaid bus came at a very fast speed from the opposite side and struck against the scooter causing him serious injuries. He fell unconscious and immediately Pawan Kumar and Ashok Kumar the two persons whom he had dropped at the Bus Stand came there and they took him to District Hospital, Una but in view of the seriousness of his condition, he was shifted to PGI, Chandigarh immediately.

In the face of the aforesaid evidence what I find that perhaps the learned Presiding Officer of the Claims Tribunal took a hyper technical view in the matter and appreciated the evidence as if he was holding a criminal trial and was judging the quality of evidence on the touchstone of deciding whether to convict or acquit the driver charged for committing the criminal offence of causing the accident. It is by now very well common that weightage and nature of the evidence in claim petitions filed under the Motor Vehicles Act, 1988 is different than the one required in criminal trials. This part, the evidence adduced before the Tribunal and as I have discussed above sufficiently established the involvement of respondent No.3 as well as the bus in

question in the accident and also sufficiently established beyond any doubt that the accident had occurred because of the rashness and negligence of respondent No.3 in driving the aforesaid bus.

In the result, therefore, I set aside the impugned judgment and while allowing this appeal reverse the finding of the Tribunal in so far as Issue No.1 is concerned. As a consequence of the reversal of the finding on Issue No.1, I remand the case to the Tribunal for its decision on other Issues in the light of this Court's finding with respect to Issue No.1 as mentioned above.

Appeal is allowed. The record of the case be sent back to the learned Tribunal where the parties through their learned Counsel are directed to appear on 6th September, 2006. The entire evidence in the case has already been led. Only after hearing arguments should the Presiding Officer be able to decide other Issues. I accordingly direct that the case shall now be finally disposed of by the learned Tribunal before 30th November, 2006.

27th July, 2006. (V.K. Gupta), C.J.
(tr)